tended rather to create a partnership or at least a conspiracy between the parties, and applied the generally accepted rule that in such a case one partner cannot have an accounting from his co-partner of the proceeds of an illegal transaction; citing *Central Trust & Safe Deposit* v. *Respass*, — Ky. —, 66 S. W. 421, 56 L. R. A. 479, I MICHIGAN LAW REVIEW, 147.

PUBLIC OFFICERS—TAXATION—SALARIES OF JUDGES.—The constitution of North Carolina provides that the salaries of the judges shall not be diminished during their continuance in office. The tax commission directed the collection of a tax on such salaries, and the members of the supreme court being of the opinion that their salaries were not subject to taxation on account of the above provision, the court requested the opinion of the attorney general on this question for their guidance. By reason of the interest of the judges in the matter, it was resolved that the court would consider the opinion of the attorney general as settling the matter to the same extent as if it were the decision of the court. By the opinion so filed, *Held*, that under a constitutional provision that the salaries of the judges shall not be diminished during their continuance in office, the salaries of the chief justice and the associate justices are exempt from taxation, direct or otherwise. *In re Taxation of Salaries of Judges* (1902), — N. C. —, 42 S. E. Rep. 970.

The decision of the above case seems to be based more on the doctrine that the unrestrained right to tax involves the power to destroy, and would thus place one department of the government at the mercy of another, than that taxation would simply be a prohibited diminution. However, from either view, the result reached is in accordance with previous decisions: Letter by Chief Justice Taney to Secretary of the Treasury of the United States, February 16, 1863; *City of New Orleans* v, *Lea*, 14 La. Ann., 197, (1859); *Opinion of Attorney General Batchelor*, Appendix, 48 N. C. (1856); *Comm.* v. *Mann*, 5 Watts & S. 403 (1843); approved 1 KENT'S COMM. 294. The only case which upholds the power to tax under a constitutional prohibition of diminution of salary is *Commissioners* v. *Chapman*, 2 Rawle, 73 (Penn. 1829), which has since been overruled by the case above cited. In this case the position taken is that such a tax does not diminish salaries; that the provision is intended to shield the incumbent of an office from legislative reduction of the consideration upon which the officer accepted his office. An attempt is also made to distinguish between laws which have a reduction for their object and not for their consequence, applying the prohibition in question to those of the first class. As the cases now stand, however desirable a tax on the salaries of judges may be, under constitutional provisions similar to those in the principal case, such a tax could not be imposed.

RAILROADS—ABOLITION OF GRADE CROSSING—TEMPORARY USE OF STREETS—DAMAGE TO ABUTTING OWNER.—Defendant was required by law to elevate its tracks in the city of Bridgeport so as to abolish grade crossings. The act provided that defendant should "have the free use of such streets or portions of streets and the right to temporarily close such streets as may be necessary for the convenient prosecution of the work." Plaintiff owned a lot fronting on the street adjacent to, and running parallel with the railroad tracks of defendant. On this lot were a grocery store, several tenements, and a livery stable. To facilitate the work of track elevation, defendant temporarily closed this street, and laid two tracks for use during the time required to make the improvements. These tracks were on that half of the street of which the plaintiff owned the fee and left only a six-foot walk in front of plaintiff's property, so that access by roadway was cut off. The street was thus closed and obstructed for over a year, and plaintiff sues for resulting

damages. *Held*, that he could recover substantial damages. *McKeon* v. *N. Y., N. H. & H. R. Co.* (1902), — Conn. —, 53 Atl. Rep. 656.

"A railroad company may be compelled to erect such structures and submit to such regulations as are necessary for the safety of the public or security of property." And an act providing for the abolition of grade crossings is a proper exercise of the police power of the state. LEWIS ON EMINENT DOMAIN, § 156 e, and cases there cited; *N. Y. & N. E. R. R. Co.* v. *Bristol*, 151 U. S. 556, 9 Am. R. R. & Corp. Rep. 593. But though defendent was authorized and virtually compelled to exercise its power of eminent domain, the court said: "No statute can avail to justify the taking of private property for public use without just compensation." That the tracks were put there "merely as a temporary expedient in aid of a lawful work and removed as soon as the work was completed, is only important in determining the amount of compensation to which he is entitled. . . . . Nor is a wrongful taking of property, whether it be real or personal, any the less a taking because it is not permanently appropriated to the wrong doer's use." The power of eminent domain carries with it the obligation to make just compensation to the person whose property is taken, and "this liability is not removed because defendant was compelled to make the changes which involved the damage to the plaintiff's property."

SALES—WARRANTY.—Plaintiff sold a second hand engine representing that it was "as good as new in every particular." Defendant, a skilled mechanic, looked at the engine but did not carefully inspect it. In an action for the price, *Held*, that these words constituted a warranty. *Milwaukee Co.* v. *Hamacek* (1902),—Wis.—, 91 N. W. Rep. 1010.

The court held that such words were a representation of physical fact and not mere words of general commendation. "As good as new" referring to a house, was held to be "the assertion of an opinion which contained within it the assertion of a fact, and though innocently made, a fraud in equity. *Eibel* v. *VonFell*, 55 N. J. Eq. 670, 38 Atl. R. 201. Where the facts are not equally known to both parties a statement of opinion may imply a knowledge of facts by the speaker which justify his opinion, as in *Smith* v. *Land & Corporation*, 28 Ch. Div. 7, where a representation that a hotel was leased to "a very desirable tenant" was held to be fraudulent.

TELEGRAPH COMPANY—DELAY IN DELIVERY—DAMAGES.—Plaintiff made a special contract for the immediate delivery of a particularly urgent telegram, summoning a physician to attend plaintiff's sick child. By negligence in the transmission and delivery of the message, the physician did not arrive until some twenty-four hours later than would have been the case had the telegram been promptly delivered. During this time the child suffered intensely, and died shortly after the physician's arrival. In an action for damages against the telegraph company, *Held*, that damages may be recovered for increased mental anguish incurred from witnessing the suffering of a sick child, where such increased suffering is occasioned by the negligent failure of a telegraph company to promptly deliver a message. *Western Union Tel. Co.* v. *Cavin* (1902),—Tex. Civ. App.,—,70 S. W. Rep. 229.

The liability of a telegraph company for mental suffering where no element of damages other than mental pain is shown, was first declared in *So Relle* v. *W. U. Tel. Co.*, 55 Tex. 308 (1881). This rule has been adhered to by some states and repudiated by others. (*W. U. Tel. Co.* v. *Wood*, 57 Fed. Rep. 471 (1893); 29 Am. L. R. 209, note 266). In the states where such an element may be considered, the question then arises, Is the negligent failure complained of, the proximate cause of the mental anguish? As stated by the